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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,415	06/20/2001	Frank P. Forbath	Forbat. F-1	7644

7590

08/27/2003

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EXAMINER

LINDINGER, MICHAEL L

ART UNIT

PAPER NUMBER

2841

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/886,415

Applicant(s)

FORBATH, FRANK P.

Examiner

Michael L. Lindinger

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 2-8 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-14 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |                                                                                             |                                                                             |
|---------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                            | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forbath U.S. Patent No. 4,493,043 in view of Fresquez U.S. Patent No. 4,711,585 in further view of Del Principe U.S. Patent No. 4,403,777. Forbath teaches a hand held apparatus for use during pregnancy labor comprising the steps a visible display 20, a calculating means U2, a memory device U1, U3 and a selection means 18, including audible alert within contraction modes alerting the user and others when parameters are met, as well as audible beeper or buzzer (Col. 4, lines 55+; Col. 13, lines 60+; FIG. 1). Forbath does not explicitly teach a handheld apparatus for use during pregnancy labor comprising an enclosure case of essentially rectangular shape providing a lower portion having width enabled for enclosing within the palm of one hand, and an upper portion of greater width than the lower portion, the case further comprising a front and back panels, said panels in convergent juxtaposition between a top and bottom surfaces (not explicitly numbered), the front panel providing a display device, actuation buttons, and a sound

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port. Fresquez teaches a handheld apparatus for use during pregnancy labor comprising an enclosure case 11 of essentially rectangular shape providing a lower portion having width enabled for enclosing within the palm of one hand, and an upper portion of greater width than the lower portion, the case further comprising a front 12 and back 24 panels, said panels in convergent juxtaposition between a top and bottom surfaces (not explicitly numbered), the front panel providing a display device 19, actuation buttons 14-15, as well as audible cues that may be substituted for the visual indicating means (Col. 3, lines 16+; FIG. 1-2). Del Principe teaches a handheld computing apparatus comprising a microprocessor, a sound port 40 positioned on the upper portion/face of the housing, as well as opposing shoulders (not explicitly numbered) for enhanced gripping (Col. 3, lines 20+; Col. 4, lines 20+; FIG. 1) It would have been obvious to a person skilled in the art at the time of the invention to not only adapt Forbath to include a design with an essentially rectangular shape and shoulders that is a conventional method in the art to provide increased grip for the user, as well as to include a sound port positioned on the front of the housing versus within the housing to clarify audible signals generated within the enclosure. By providing shoulders, the Applicant is increasing the surface area of the lower portion, thereby increasing friction between the user's hand and the lower portion of the apparatus, thereby providing a better grip to the user.

***Allowable Subject Matter***

1. Claims 9-14 are allowed.

***Prior Art***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
  - Török U.S. Patent No. 5,042,503 discloses a process and apparatus for extended, non-invasive monitoring of uterine contractions.
  - Handy U.S. Patent No. 5,876,335 discloses a multipurpose pregnancy and labor timing device comprising an output device for conveying a plurality of datum to a human observer such as a current time, day and date, an expected date of birth of the child, an estimated elapsed time period since the conception date of the child, and a variety of other datum values.
  - Tomer U.S. Patent No. 5,876,357 discloses a uterine cervix dilation, effacement, and consistency monitoring system comprising a probe comprising a linear caliper and a flexible membrane is applied to a uterine cervix in order to calculate displacement versus normal values to determine likelihood of birth.
  - Bohn U.S. Patent No. 6,122,559 discloses a hand held computer for inputting soccer data comprising a keypad, an audible alarm, and opposing shoulders transitioning from a lower portion to upper portion for improving gripping.

***Response to Arguments***

1. Applicant's arguments filed June 11, 2003 have been fully considered but they are not persuasive. Regarding Claim 1, Applicant argues that the location of the speaker is advantageously located in the position of the current invention versus the position demonstrated in the Prior Art. The Applicant can only speculate at not only what position a user would handle the hand held apparatus, but to also consider the volume value at which a user may hear the speaker during labor practice, and whether a given position may inhibit the broadcasting of sound from the speaker more so than another position. The structure of the hand held apparatus is not only taught, but possesses a speaker element producing audible alarms. For the foregoing reasons, Claim 1 continues to be anticipated by the combination of the Frobath, Fresquez, and Del Principle references. Accordingly, the Examiner's rejection over the Frobath, Fresquez, and Del Principle combination under 35 U.S.C. 103(a) is upheld.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael L. Lindinger whose telephone number is (703) 305-0618. The examiner can normally be reached on Monday-Thursday (7:30-6).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (703) 308-3121. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7318 for regular communications and (703) 746-7318 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Michael L. Lindinger  
Patent Examiner  
Art Unit 2841

MLL  
August 18, 2003

A handwritten signature in black ink, appearing to read 'D. A.', is positioned above the printed name of David Martin.

DAVID MARTIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800